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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 716 (DLC)
Telephone Conference

5 TELEMAQUE LAVIDAS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 July 2, 2020
11:00 a.m.

10 Before:

11 HON. DENISE COTE,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 Acting United States Attorney for the
Southern District of New York

16 RICHARD A. COOPER

DANIEL TRACER

17 DREW SKINNER

Assistant United States Attorneys

18 DECHERT LLP

19 Attorneys for Defendant

20 BY: JONATHAN R. STREETER

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(The Court and all parties appearing telephonically)

THE COURT: I'm going to take appearances first, and then I'm going to create a record of the situation in which we find ourselves.

I'll take an appearance from the government.

MR. TRACER: Daniel Tracer, for the government. Good morning, your Honor.

THE COURT: And I will take an appearance from the defendant.

MR. STREETER: Jonathan Streeter, for Mr. Lavidas.

THE COURT: And, Mr. Lavidas, you are participating, as well, in this proceeding?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you.

THE DEFENDANT: I can hear you well.

THE COURT: This is a CourtCall proceeding. It is now 11:12. The situation is as follows:

This proceeding was scheduled to begin at 11:00 o'clock. The defendant is incarcerated in the MDC. We are conducting this proceeding virtually through a technology called CourtCall. The plan was for the defendant and defense counsel, who are separately located, to both be able to participate through videoconferencing procedure.

Mr. Streeter, defense counsel, has audio access, but it is -- to our great disappointment, he does not have video

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1 access. I can see both the defendant and the Assistant United
2 States Attorney, and they can see me.

3 Am I right, Mr. Lavidas, you can see me? Is that
4 correct?

5 THE DEFENDANT: That's correct, your Honor.

6 THE COURT: And am I right, Mr. Tracer, that you can
7 see me?

8 MR. TRACER: Yes, your Honor.

9 THE COURT: Thank you.

10 But, unfortunately, Mr. Streeter cannot see any of us,
11 and we cannot see him. One of the capabilities that we had
12 hoped to be available to the defendant and defense counsel in
13 this conference call and sentencing proceeding is that they
14 would be able to consult with each other separately if that
15 became important for either of them during this sentencing
16 proceeding.

17 Mr. Rogers, can I ask, even though defense counsel
18 does not have video access to this proceeding, will he still,
19 technologically, be able to have a private conversation with
20 his client or not?

21 MR. ROGERS: Yes, Judge. I was just actually in a
22 private room with him, and we were communicating without issue.

23 THE COURT: Thank you.

24 Mr. Rogers, from the District Executive's office, has
25 been helping us with the technological challenges that we've

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1 been faced with since 11:00 o'clock.

2 Mr. Streeter, I apologize, on behalf of the Court and
3 CourtCall, that the videoconferencing capability has not
4 permitted you to see us or us to see you. When I say "us," I
5 mean -- oh, ho, Mr. Streeter just --

6 MR. STREETER: My associate, Siobhan Namazi, sent me
7 an email telling me how to fix the problem. So thank you to
8 her.

9 THE COURT: Oh, wonderful.

10 So, let me begin again.

11 Mr. Lavidas, can you see your attorney now?

12 THE DEFENDANT: Yes, I can, your Honor.

13 THE COURT: And, Mr. Streeter, are you able to see
14 your client?

15 MR. STREETER: I am, yes, your Honor. Thank you.

16 THE COURT: And are you able to see me, Mr. Streeter?

17 MR. STREETER: I am, yes, your Honor.

18 THE COURT: Okay, good.

19 So let's begin the sentencing proceeding. I'm going
20 to ask, for the benefit of others who use CourtCall,
21 Mr. Streeter, if, when this proceeding is done, you could let
22 my deputy, who will then send the information to Mr. Rogers, if
23 you could let Ms. Rojas know what tips you got from your staff
24 that solved the problem, so that Mr. Rogers can help others in
25 this same way in future difficulty. Would you be able to do

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1 that, Mr. Streeter?

2 MR. STREETER: I absolutely will, yes, your Honor.

3 THE COURT: Thank you so much.

4 Mr. Rogers has been able to work magic in a number of
5 ways in these proceedings, but there are always new challenges.

6 Let me begin with further comments about the situation
7 in which we find ourselves.

8 We are conducting the sentencing proceeding remotely.
9 And under our district's rules, no one may broadcast or record
10 this proceeding, and a violation of those rules will result in
11 sanctions.

12 Notice of this sentencing proceeding has been filed on
13 the public record, and both the press and the public have
14 access to the audio of this proceeding, and counsel should
15 assume that they are participating remotely and able to hear
16 all that we have to say during the course of this proceeding.

17 I want to make findings with respect to the CARES Act
18 as well. The chief judge of our district has entered a number
19 of orders pursuant to the CARES Act making appropriate findings
20 as to why it is not possible at this time for us to proceed in
21 court in person with a proceeding of this importance, including
22 a sentencing proceeding. Her most recent order of that kind
23 was issued on June 24th of this year. She found that felony
24 sentences cannot be conducted in person without seriously
25 jeopardizing public health and safety due to our pandemic.

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1 I am able to find that there are good reasons for not
2 further delaying this sentencing proceeding and that a further
3 delay in this sentencing proceeding would result in serious
4 harm to the interests of justice, and I am able to make that
5 finding because of a variety of things.

6 First of all, the defendant is seeking a sentence of
7 time served here. It is possible that in July, we would be
8 able to conduct in-person sentencing proceedings in the
9 Southern District courthouse with the defendant present in the
10 courtroom, and able to see me and me able to see him, and all
11 counsel appearing, as well, in my courtroom, but the defendant
12 has waived his right to that personal presence in my courtroom
13 for a sentencing proceeding. He's waived it a number of times,
14 as represented by his counsel, and, most recently, this week,
15 when given the option of waiting a bit longer and seeing if we
16 could conduct an in-person proceeding in July.

17 I have a written waiver from the defendant, I believe,
18 and I think that was filed on June 18th.

19 I have recent letters from defense counsel, filed on
20 ECF, indicating the defendant's strong desire to move forward
21 with the sentencing today and not to wait to see if we could do
22 it in person a few weeks from now or even next week.

23 So, with that sort of background, I want to confirm
24 today, first with you, Mr. Streeter, and then with the
25 defendant. Mr. Streeter, have I accurately described the

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1 defendant's desire to proceed with his sentence today to a
2 videoconference procedure and to give up his right to appear
3 before me in person, in my courtroom, for a sentencing?

4 MR. STREETER: You have, your Honor.

5 THE COURT: And, Mr. Lavidas, let me ask you: Have
6 you heard what I described on the record as to the options that
7 you have for proceeding to sentence either today or at a later
8 date, perhaps in my courtroom?

9 THE DEFENDANT: Yes, I did, your Honor.

10 THE COURT: And is it your desire to proceed with your
11 sentence today even though it cannot occur in my courtroom with
12 you and me present in the same room?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Okay.

15 I find a knowing and voluntary waiver of the right to
16 be present for this sentencing proceeding and of the
17 defendant's desire to, instead, proceed remotely to this
18 videoconference facility.

19 Let me describe some other things that are sort of
20 background to this sentencing proceeding.

21 I received a number of submissions in connection with
22 this sentence. I have the defense submission of June 8th; I
23 have the supplemental submission of June 9th; I have, as part
24 of the sentencing submissions, 144 letters from family and
25 friends of the defendant and fellow inmates of the defendant; I

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1 have two letters from psychologists regarding the mental health
2 and impact of their separation from the defendant on the wife
3 and daughter of the defendant, who live in New York; I have
4 sentencing transcripts for defendants that the defendant wishes
5 the Court to consider when arriving at what he suggests is an
6 appropriate sentence for this individual defendant; I have the
7 government's submission of June 16th; I have another defense
8 submission of June 22nd, and I should mention, as well, that in
9 connection with some comparators' sentences, or sentences of
10 other defendants, the defendant, in particular, wants me to
11 consider the sentence imposed on Bryan Cohen, an investment
12 banker that pleaded guilty as part of the same overall or
13 overarching insider trading scheme, not someone directly
14 involved with the defendant at all. I don't want to imply
15 that, but there's a large scheme here, and that was somewhat
16 described at trial, and it's not in dispute that there was an
17 overarching scheme.

18 I also received, on June 24th, a consent restitution
19 order. The defendant is consenting to restitution in the
20 amount of \$186,430.99. Pursuant to the terms of the
21 restitution order, he is to make payment of half that amount
22 within 90 days of entry of the order -- that is, \$93,215.50 --
23 and the requirement to pay the remainder is dependent on what
24 happens with respect to the sentence of a coconspirator,
25 Mr. Demane, who testified at trial. The government represents

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1 in the restitution order that it will seek the same amount of
2 restitution to be paid to Takeda/Ariad from Mr. Demane at his
3 sentence and will seek an order that he be required to pay that
4 amount in 90 days.

5 Let me ask the government: When you make a reference
6 to that amount, you mean the amount to be \$186,000, et cetera,
7 roughly, Mr. Tracer?

8 MR. TRACER: I'm sorry, I'm not sure I understand the
9 Court's question.

10 THE COURT: Thank you.

11 The restitution order that's been proposed here is for
12 joint and several liability, as I understand it, for the
13 amount -- and I'm rounding here -- of \$186,000. Do I
14 understand that correctly?

15 MR. TRACER: Correct, your Honor.

16 THE COURT: And, therefore, you would be seeking an
17 order within 90 days of Mr. Demane's sentence, that he pay that
18 amount -- that is roughly 186,000 -- or that he pay half of
19 that amount -- roughly 93,000 -- within 90 days of Mr. Demane's
20 sentence?

21 MR. TRACER: That's right, your Honor.

22 THE COURT: What? What is right?

23 MR. TRACER: So, if Mr. Lavidas pays half of the
24 restitution, in other words, if he complies with the agreement
25 that we have to pay his half, then we will seek the remainder,

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1 so the 93,000 or so from Mr. Demane within 90 days of his
2 sentencing, such that the restitution would be split between
3 the two of them.

4 THE COURT: So, counsel, I need your guidance with
5 respect to the following situation: As I understand it, this
6 proposed restitution order contemplates that this defendant, if
7 I sign this order of restitution, that Mr. Lavidas will pay the
8 entire amount of 186,000 subject to reduction, since it would
9 be imposed jointly and severally on he and Mr. Demane, subject
10 to reduction for any amount that Mr. Demane pays within 90 days
11 of Mr. Demane's sentence. I want to ask counsel what their
12 understanding is if Mr. Demane does not pay his half -- that is
13 roughly the 93,000 -- within 90 days of Mr. Demane's sentence.

14 MR. TRACER: So, our expectation is that if
15 Mr. Demane, for whatever reason, does not or is not able to pay
16 that amount, then because the defendant is still on the hook
17 for the entire amount -- in other words, the 186,000 -- then
18 the defendant would be liable for that other half as well after
19 that time. But what this does is, effectively, it defers his
20 obligation to pay that in order to allow us to seek that from
21 Demane. But to your Honor's question, again, if Mr. Demane
22 were not to pay that, then Mr. Lavidas would be on the hook for
23 the entire amount.

24 THE COURT: Okay. Thank you.

25 So, one of the things I have to do in ordering

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1 restitution is also to order a payment schedule for restitution
2 of any remaining amount that remains due and owing from
3 Mr. Lavidas.

4 Have counsel discussed what schedule -- for any
5 remaining amount of restitution beyond the roughly \$92,000,
6 what that payment schedule should be?

7 MR. TRACER: We have not had any discussions between
8 counsel about that.

9 We'd be happy --

10 MR. STREETER: My understanding -- and we're agreeable
11 to this -- is that Mr. Lavidas' 93,000 would be due within 90
12 days of his -- the order being entered in his case, and then
13 the remaining 93,000 for him would be deferred until after 90
14 days after Mr. Demane's sentencing, and if Mr. Demane does not,
15 or is not ordered to, pay the other 93,000, then Mr. Lavidas'
16 would come due.

17 And maybe what your Honor can do is set a schedule for
18 after 90 days. So maybe another 90 days after that, because I
19 think if Mr. Demane doesn't pay, I certainly will be
20 encouraging the government to try to make him pay, because the
21 intent of this order is that they will split it, and if he
22 doesn't pay within 90 days, I would like there to be some
23 period of time for the government to pursue him for it before
24 Mr. Lavidas is obligated to pay the other half.

25 But the intent of the order is -- I'm sorry, that's

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1 it.

2 THE COURT: Okay.

3 So, I will revise the restitution order, so that
4 should any amount remain outstanding after Mr. Demane's
5 sentence, then Mr. Lavidas will have 90 days thereafter to
6 complete payment of the restitution amount due and owing.

7 Is that agreeable to the government?

8 MR. TRACER: It is, your Honor.

9 THE COURT: Thank you.

10 Another open issue: Mr. Tracer, any need to issue a
11 forfeiture order?

12 MR. TRACER: No, your Honor. We're not seeking any
13 forfeiture here.

14 THE COURT: Thank you.

15 So, I think we can now go into the substance of the
16 issues presented to me for this sentence. Let me just talk
17 about the guidelines calculation for a moment.

18 The defendant was convicted at trial. The presentence
19 report calculates his guidelines range as follows: An offense
20 level of 26 and a criminal history category of I, with a
21 sentencing range of 63 to 78 months.

22 Let me first ask defense counsel: Have you and your
23 client both reviewed the presentence report?

24 MR. STREETER: We have, your Honor.

25 THE COURT: Do you have any objections to the

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1 presentence report, other than what might be contained in your
2 written sentencing submissions to me?

3 MR. STREETER: None other than what's in the written
4 sentencing submissions.

5 THE COURT: Thank you, Mr. Streeter.

6 I should mention with respect to the presentence
7 report, the presentence report is made part of the record in
8 this case and shall be filed under seal. Counsel, should there
9 be an appeal, counsel on appeal may have access to the sealed
10 presentence report without further application to this Court.

11 The defendant seeks a role adjustment here and,
12 therefore, a different calculation of the sentencing guidelines
13 range. He seeks a role adjustment as a minimal participant in
14 the criminal activity.

15 He also seeks, after application of Section 3553(a)
16 factors, a sentence of time served. The defendant has been in
17 custody since October 18th, 2019.

18 The probation department recommends a sentence of 18
19 months. It does not adopt the defendant's request for a role
20 adjustment.

21 The government also opposes a role adjustment. Its
22 sentencing submission suggests a sentence substantially below
23 the bottom of the guidelines range; that is, 63 months, but
24 also a sentence substantially in excess of the 18 months
25 recommended by the probation department.

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1 So, I think that is the structure of the issues before
2 me. I want to hear counsel, obviously, on the issue of role
3 adjustment, if you wish to say anything to supplement your
4 written submissions to me. But, also, I need to give counsel
5 an opportunity to address anything they'd like to say to me in
6 connection with this sentence and, in particular, how I should
7 apply the 3553(a) factors. And, of course, I need to hear from
8 the defendant.

9 Because the role adjustment issue is so intimately
10 tied to the facts underlying the criminal conduct here for
11 which the defendant was convicted, I think it would be better,
12 unless counsel wish to proceed otherwise, that we bind any
13 additional arguments they want to make about role adjustment
14 with their general statements with respect to what the
15 appropriate sentence is in this case.

16 Is that agreeable to you, Mr. Streeter?

17 MR. STREETER: It is, your Honor.

18 THE COURT: Is that agreeable to you, Mr. Tracer?

19 MR. TRACER: Yes, your Honor.

20 THE COURT: Okay.

21 With that understanding, I'm going to begin by just
22 putting on the record -- well, no, I know counsel are familiar
23 with the sentencing guidelines for role adjustment, 3B1.2. I'm
24 not going to put that on the record -- I may later -- but I'll
25 hear anything the government has to say, either about the role

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1 adjustment or about the sentence that I should impose today,
2 for any reason that it believes is important for me to
3 consider.

4 MR. TRACER: Thank you, your Honor. This is Daniel
5 Tracer.

6 I'd like to address the role adjustment, and then I
7 will move from that into the larger 3553 discussion that we
8 want to amplify a little bit from our submission.

9 With respect to the role adjustment: I think that the
10 fundamental flaw in the defendant's argument here is that he
11 wants to have it both ways. He wants to say that his client
12 was not involved in a larger conspiracy; in other words, all
13 these downstream tippees, he was not involved in that, but, at
14 the same time, for purposes of minor-role adjustment, he wants
15 to say, well, he didn't know about all these other things. So
16 I think you can't have it both ways.

17 Here, your Honor, the crime that was proven at trial
18 was really just a fairly narrow set of criminal conduct. It is
19 the illegal tipping that comes from his father, he gets that
20 information, he gives it to Mr. Nikas, Mr. Nikas shares it with
21 Demane. Now, other things happen, as your Honor alluded to
22 earlier, there's a lot more going on, but that's not the crime
23 that the defendant is charged with, and the crime that he is
24 charged with, he cannot be considered a minor role within that
25 crime. And, again, specifically, the crime of tipping Ariad

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1 MNPI from his father to Mr. Nikas.

2 For example, the factors that we both address in our
3 submission talk with the degree to which the defendant
4 understood the scope of the criminal activity. Mr. Lavidas
5 understood, when he was giving that information to Nikas, that
6 Nikas was going to trade on it. That's the crime alleged, and
7 he understood the scope of that crime.

8 With respect to the defendant's planning and
9 organizing of the activity and the defendant's decision-making
10 in that activity, it was the defendant's decision to share that
11 information with Nikas. So he was -- not just was he not
12 minimal, he was central to the charged scheme in this case, the
13 illegal tipping on Ariad.

14 And defense counsel makes note of the fact that he
15 being essential is not -- does not necessarily negate the minor
16 role. And I think, your Honor, if you look at how that's
17 described and how it's used, our understanding of that is, you
18 know, you might have a drug conspiracy with someone who is
19 selling drugs on the corner, and that person is kind of a very
20 small level concern, and you might say, well, he's essential
21 because if he doesn't sell the drugs, the crime never happens.
22 And I think it's that kind of case that the guidelines is
23 getting at in saying the fact that someone is essential doesn't
24 necessarily preclude a minor role.

25 This case is very different. In this case, the

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1 defendant had a unique position of access to confidential
2 information, he understood that that information was
3 confidential, he understood that that information was very
4 valuable, and he decided to use that information in order to
5 enrich his friend. So, for those reasons, and as further
6 explained in our submission, we don't think that within the
7 charged crime and the proven claim in this case, the defendant
8 played a minor role in that particular crime.

9 Turning to the 3553 factors more generally: As your
10 Honor stated, our view here -- and we've thought about it very
11 carefully -- is that the guideline range is probably a little
12 too high in this case, and so we are not asking for a guideline
13 sentence, but we do think a substantial term of incarceration
14 is necessary in terms of general deterrence and promoting
15 respect for the law for this serious crime, and we think that
16 the probation office's recommendation is a little bit low, and
17 the sentence really should be in excess of that to reflect the
18 severity of the crime and to make a proper set of deterrence
19 out of this case.

20 Reading through the defendant's submission, the
21 defendant talks a lot about the value of hard work in his life,
22 and without detracting from other areas of his life where he
23 may have worked hard, this case and what was proven at trial
24 shows a different side of his character, where the facts proven
25 at trial show that he was willing to take a shortcut when he

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1 had information that was valuable and give it to his friend.

2 While the defendant says that he was not doing it for
3 pecuniary gain and he didn't make money out of it, I think
4 that's a little overly simplistic in this case. This was a
5 crime of greed and arrogance. It was a crime of greed in the
6 sense that having confidential information and giving it to
7 someone else is the same thing as stealing from a company and
8 giving it to your friend. It bestows a pecuniary value on his
9 friend, and the fact that he chose not to take that money
10 himself, but to give it to his friend, because his friend was
11 someone he had a particularly valuable business relationship
12 with, does not take it out of the scope of a crime of greed in
13 any way.

14 And it was a crime of arrogance. He did not think he
15 would get caught, he thought he had this position of privilege,
16 and he could freely give away this information to his chosen
17 few, and they could make money from it, and that's how this
18 crime worked, and it was a serious crime.

19 The defendant suggests that he was taken advantage of
20 a few times in his brief, that Nikas somehow hoodwinked him
21 into doing this. And I don't think, your Honor, that that is
22 consistent with the picture that the defendant paints of
23 himself, a hard-working sophisticated businessman. I think,
24 your Honor, the far more reasonable inference to draw is that
25 he knew what he was doing, understood what he was doing, and

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1 believed that this was a good way for him to cheat, and get
2 ahead, and advance him and his friend's business interests.

3 The fact that the defendant also talks about he didn't
4 personally trade or he didn't understand how shorting worked,
5 at the end of the day, I don't think there's any dispute here
6 that the defendant understood that Nikas was a very wealthy
7 person, it was well-known that Nikas was a securities trader,
8 and it was no secret why Mr. Nikas wanted this information.
9 Again, the evidence shows that these tips happened multiple
10 times, so he continued to give it to Mr. Nikas and had the
11 continued understanding that this was valuable to Mr. Nikas.
12 So, the idea that somehow he didn't really understand what was
13 going to happen or he really didn't know how things worked once
14 he gave the information, again, I think it paints the defendant
15 as more naive than he really is and, again, downplays his role
16 as a middleman, which he really was in this scheme.

17 In terms of other cases, briefly, your Honor, we did
18 cite the Stewart case to your Honor. I think that is a case
19 that bears a lot of similarity. Stewart was an insider who
20 tipped to his father. Kind of like here, he tipped to someone
21 he had a close personal friendship with. It was not an
22 exchange for bags of cash or anything like that, he did it on
23 multiple occasions, and, in that case, Stewart originally got a
24 36-month sentence, and it was subsequently reduced to a
25 24-month sentence, but we think that kind of tipping and that

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1 kind of case is actually far more comparable to the instant
2 case than some of the others that the defendant cited that
3 involved people who were far less sophisticated or who didn't
4 quite have that level of friendship that they were tipping.

5 I want to address, briefly, the Cohen sentence that
6 your Honor alluded to, which was the subject of the defendant's
7 supplemental letter to the Court. Just three points about the
8 Cohen sentence, and, for context, your Honor is right, Cohen is
9 a participant in the broader insider trading scheme that this
10 investigation arises out of, but he had no -- there is no
11 alleged allegation between Mr. Lavidas and Mr. Cohen.

12 Mr. Cohen got a sentence of home confinement. In that
13 case, however, I want to point out three things that I think
14 make Mr. Cohen's case different than this case:

15 Number one -- and this was something that Mr. Cohen
16 relied very heavily on -- is that Mr. Cohen agreed to accept
17 responsibility and pleaded guilty quite quickly after being
18 charged;

19 Number two, the guidelines in that case were far lower
20 than this case. The actual actionable -- in other words, U.S.
21 trading, U.S. stock trading, that happened in that case was
22 around \$260,000, and, so, versus Nikas, who made \$6.5 million
23 in this case, which is a far, far greater amount at issue;

24 And, number three, Mr. Cohen had a substantial
25 submission -- and this came up at his sentencing -- of certain

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1 medical conditions that created a real health risk if he were
2 to be put in prison, and Judge Pauley, I think, took that into
3 account substantially as well in imposing sentence.

4 So, the Cohen case, I think, for those three reasons,
5 really doesn't provide good instruction in this case, and,
6 instead, as we've outlined in our papers, we think this is a
7 case where a substantial term of imprisonment, albeit not
8 necessarily the guidelines, but a meaningful and substantial
9 term of imprisonment is appropriate. And I'm happy to answer
10 any additional questions, if the Court has them.

11 THE COURT: I want to give you a chance to address
12 this, Mr. Tracer, because I want, also, Mr. Streeter to have a
13 chance to address it: The jury found, in returning its
14 verdict, that the defendant's father, who was on the board of
15 Ariad and a close friend of the CEO of Ariad, Mr. Berger, that
16 the jury found that the defendant's father knowingly violated
17 his fiduciary duty to Ariad by tipping his son; that the
18 defendant's father anticipated that securities trading would
19 occur; and that the defendant's father anticipated receiving a
20 personal benefit from the tipping.

21 The jury also found, by returning its verdict of
22 guilty, that the defendant himself knew that his father had
23 breached his fiduciary duty to Ariad when his father tipped
24 him; that the defendant anticipated that his father would
25 receive a personal benefit from the tipping; and that the

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1 defendant also personally benefited, either directly or
2 indirectly, by the tipping that he did of Mr. Nikas. So, I
3 think the evidence at trial painted a picture that the jury
4 apparently found credible of a wealthy Greek businessman, the
5 defendant's father, having liquidity problems during the very
6 time that the defendant was engaged in this tipping activity of
7 Mr. Nikas, and Greece was -- though I don't think this was
8 described in great detail to the jury, it wasn't disputed that
9 Greece was going through a period of great financial difficulty
10 at the time and that the defendant's father was as well.

11 So, I think the jury found, based on the charge and
12 the guilty verdict, that the defendant was knowingly engaged in
13 a tipping scheme with his father, his father knowingly
14 breaching his duty to Ariad, in the hope that the family would
15 benefit from tipping Mr. Nikas. I want to make sure that I
16 understood correctly what the government's theory was and what
17 the government believed the evidence at trial supported and
18 what the jury found.

19 MR. TRACER: Sure, your Honor.

20 Let me go through what our understanding, and I think
21 the fair and reasonable inferences -- and this is Daniel
22 Tracer -- what the fair and reasonable inferences are from the
23 evidence presented at trial.

24 Your Honor is right, there was evidence at trial that
25 the defendant's family had substantial wealth, but that they

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1 did have liquidity problems, and there was also evidence at
2 trial that the defendant himself was building this snack
3 business and was also looking for investors, and investments,
4 and sources of liquidity. So, both the family and the son,
5 during the relevant period, were looking for liquidity and were
6 looking for opportunities for business advancement.

7 With respect to the -- and what Mr. Demane, I believe,
8 testified is that Mr. Nikas told him that he was having
9 meetings with the father and the son; in other words, Mr. Nikas
10 was very, very friendly with Mr. Lavidas, but was also friendly
11 with Mr. Lavidas' father and met with him from time to time.
12 And during those meetings, undoubtedly, they discussed
13 Mr. Nikas' business, and, ultimately, that led to the tipping
14 through the father, to the son, to Mr. Nikas. So what I think
15 the evidence shows that the father was doing, by providing this
16 information to his son, was he was able to help his son without
17 reaching into his own pocket. In other words, he knew that his
18 son -- he didn't have the liquidity to provide money to his
19 son, he knew that his son was building this business, and by
20 tipping confidential information to his son that his son could
21 give to Nikas, he was able to benefit his son without having to
22 draw on his own bank account.

23 And the defendant, in turn, took that information and
24 gave it to Nikas as a way of developing the friendship with
25 Nikas, and that friendship was not just a friendship to

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1 hangout, that was a friendship that involved substantive
2 business transactions. So the evidence at trial, for example,
3 showed that Nikas made a loan to the defendant's company, that
4 his wife made an investment in the defendant's company, and
5 those were the sort of pecuniary benefits that the defendant
6 got from Mr. Nikas. There was also testimony, I think from
7 Mr. Giatrakos, that Mr. Nikas may have been involved in helping
8 Mr. Lavidas with the snack bar business; in other words, like
9 where to put the bars in different drugstores and things like
10 that. So, at the end of the day, Mr. Lavidas was cultivating
11 this friendship and relationship with Mr. Nikas in order to
12 advance his business interests. That was the nature of the
13 quid pro quo here. And the father, by supplying the
14 information, was essentially giving fuel to his son. He was
15 able to financially benefit his son and ensure his son's
16 success through taking that confidential information that was
17 entrusted to him and giving it to his son.

18 That's the government's theory, and I think, for the
19 reasons I described, the evidence at trial, one can infer all
20 of those things very reasonably.

21 THE COURT: Okay. Thank you.

22 Mr. Streeter, I want to turn to you. Obviously, I
23 know you want to address the role issue, but I'll also hear
24 anything you have to say with respect to what sentence I should
25 impose here.

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MR. STREETER: Thank you, your Honor.

I'm going to address the role issue and the other issues that have come up here today in the course of my broader discussion about what the appropriate sentence is in this case.

So, first off, I wanted to start off talking about Mr. Lavidas as a person.

Mr. Lavidas has spent his entire life helping his broader community. He has engaged in many, many acts of public charity, serving in many charities, volunteering and helping. They are listed extensively in the presentence report and in our sentencing submission.

He has also spent an enormous amount of time in his life helping the people around him, his coworkers, the employees of his family business, his friends, his family members.

He has 144 letters of support that were submitted in connection with this sentencing by coworkers, classmates, teachers, employees, friends, business associates, inmates at the MDC, members of his broader community. At this time of public shame, 144 people came forward and wrote letters to your Honor, which have been publicly filed, put their names on those letters for the public file, and said this is a good man who has done an enormous amount of good in his life. He's only 39 years old, and to already have this many people saying this many things about his public charity, his personal charity, his

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1 giving nature, the manner in which he helps his fellow inmates
2 at the MDC, which your Honor mentioned before in listing the
3 submissions, he is incredibly good to his community and to the
4 people --

5 THE COURT: Excuse me, Mr. Streeter. I think some of
6 the inmate letters were from the MCC inmates, I think.

7 MR. STREETER: That's correct, your Honor.

8 THE COURT: Thank you.

9 MR. STREETER: Shortly after he got to the MDC, he was
10 put on lockdown, and it became impossible, and that's when the
11 sentencing was scheduled to occur much earlier, but, yes, your
12 Honor, thank you.

13 So, look, we have a record of, really, an
14 extraordinary amount of good service to the people in his life
15 and to the broader community at a very young age of 39, and I
16 think 144 letters is an extraordinary testament to that, and
17 that must be taken account of at the time of the sentencing.

18 The second thing I want to say is that, even according
19 to the government, even according to the government's most
20 strident representation of its evidence, this case is about
21 highly, highly aberrant conduct. If you accept everything that
22 the government has alleged, it is about three tips provided,
23 two of them seven years ago, one of them five years ago, to
24 help a friend. There is no allegation that he got a cut of the
25 profits. We had a discussion just now about some of the

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1 financial aspects of the case, and I want to talk about that
2 for a minute, but putting that aside, this is about three tips,
3 five and seven years ago, to one friend, to help that friend.
4 That is not a lifetime of crime or anything like it. It is,
5 even accepting the government's evidence completely as true,
6 highly, highly aberrant conduct.

7 Now, in terms of the financial evidence, your Honor:

8 First of all, I want to say this: You said some
9 things about the jury's verdict. All that the jury needed to
10 conclude, as your instructions said, as a matter of law here,
11 was that Mr. Lavidas and his father expected to benefit a
12 friend, Mr. Nikas. That's all that was required. That's all
13 they needed to find, was that they were friends and that they
14 expected for Mr. Nikas to get a benefit as a friend from them,
15 the manner in which it makes them feel good by helping a
16 friend. That is all the instructions required. That's all
17 that is required by the law. And we cannot surmise that the
18 jury concluded anything more than that from tendrils of
19 evidence about potential financial benefits even the government
20 did not aggressively pursue at this trial. The government
21 argued in its opening and in its closing that the principal
22 motivation and the benefit that Mr. Lavidas got here was
23 helping a friend.

24 Now, I know there was some other evidence, and I want
25 to talk about that for a minute, but even the government did

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1 not focus on that evidence. Even the government, to its
2 credit, did not allege that there were cash payments, because
3 there were none, and there was no evidence of any. It was an
4 assumption by Mr. Demane in his prep there were cash payments,
5 and he testified at trial that that was an assumption that he
6 made, but there was no basis for it, other than that he was
7 making cash payments to his sources.

8 Now, in terms of the financial benefits alleged here,
9 it is essentially an investment by Mr. Nikas' wife, who is
10 independently wealthy, in the health food bar company. That
11 investment was made not close in time to the tips; it was made
12 well after the tips. It was fully documented and public. She
13 got shares in exchange for it, and she had an interest in sort
14 of the health food business, as was testified to at trial. And
15 so the connection between the two was not made, and the
16 government, to its credit, didn't argue it in closing. They
17 were friends, they had overlapping business interests, but it
18 did not say that one was a quid pro quo for the other in its
19 closing or its opening.

20 The second thing I wanted to say about the loan, the
21 loan that Mr. Nikas made, well after the tips alleged in this
22 case, number one, was not in any way explicitly tied to these
23 tips; and, secondly, one-half of that loan was paid back before
24 Mr. Lavidas was arrested. It does not make sense that if he
25 was being paid for the tips, if you pay back one-half of the

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1 loan, and he would have paid back the other half of the loan if
2 he hadn't been arrested in this case.

3 And, so, the connection between the financial issues
4 and the benefit in this case was not strong, and the government
5 didn't argue it. All they needed to prove was that both
6 Mr. Lavidas and his father expected to help a friend. That's
7 all the jury had to find, and that is what the evidence is.

8 Now, even accepting all of that, even accepting that
9 it's something more than that, there were no cash payments,
10 there was no such thing, and even according to the government,
11 Mr. Lavidas is much, much less culpable than the other players
12 in this scheme.

13 And I want to focus now on the role for a minute.

14 The relevant people to consider for a role reduction
15 are Mr. Nikas, Mr. Demane, who the government alleged was a
16 coconspirator, and Mr. Lavidas. And I don't think, your Honor,
17 there's any way to look at this evidence that the conduct that
18 Mr. Demane and Mr. Nikas engaged in, even with respect to the
19 trading they did on Ariad, the burner phones, all of this
20 activity that they engaged in, there is no way to look at this
21 evidence, even if you just confine it to the Ariad scheme, and
22 not say that Mr. Lavidas was much, much less culpable than
23 those two other people. Those two other people made about
24 \$7-1/2 million in profits. Mr. Lavidas had no way of knowing,
25 or controlling, or having any input into those profits. He

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1 participated in none of the trading, he got none of the
2 proceeds from it, he had no way of knowing what they would do.

3 Assuming everything about the verdict is true, that he
4 did know that Mr. Nikas would trade, there is no evidence that
5 he had any idea how much or what he would trade. And the
6 burner phones and all the other deceptive conduct was certainly
7 part of the Ariad scheme, and so even just confining ourselves
8 to the individuals that the government says need to be compared
9 for purposes of culpability in evaluating a minor role,
10 Mr. Lavidas is clearly much, much less culpable than those two
11 other individuals.

12 The other thing to consider, your Honor, is that what
13 Mr. Tracer just said about his conduct that makes him not
14 eligible for a role reduction, what Mr. Tracer listed for your
15 Honor were the minimal requirements to find guilt that
16 Mr. Lavidas knew that Mr. Nikas would trade. If they hadn't
17 proven that, he would not have been found guilty. And the
18 other things that Mr. Tracer said were minimal requirements,
19 that there was a benefit that Mr. Nikas got, that there was a
20 breach of a duty at the company level by the father that then
21 resulted in the son being the middleman. These are all things
22 that the government needed to prove minimally in order to meet
23 the elements of the crime. It cannot be the law that if you
24 meet the elements of the crime, you are not eligible for a
25 minor-role reduction. That would mean no one would ever be

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1 eligible for a minor-role reduction. The reality is that the
2 evidence here, even by the government's rendering, was about
3 minimal requirements for the elements of the crime. And so a
4 minor-role reduction is appropriate here.

5 Now, I don't want to allow this proceeding to get sort
6 of taken over by that issue. I think the real issue here, your
7 Honor, is what is a fair and just sentence in this case. What
8 is the right sentence, in this case, in light of the sentences
9 that have been given to other people in this case, the
10 sentences that have been given to other people who engaged in
11 similar conduct, and the extraordinary circumstances under
12 which Mr. Lavidas has already served eight and a half months in
13 prison, and his otherwise extraordinary circumstances as a
14 very, very good man who has been an incredibly charitable
15 member of his community, as testified to by the 144 letters.
16 And I want to talk a little bit about some of that.

17 I want to talk for a minute about -- I mean, we talked
18 already about how Mr. Lavidas was much less culpable than the
19 other players in this scheme, even Mr. Demane and Mr. Nikas,
20 who the government acknowledges are part of the Ariad scheme.
21 Now, parenthetically, he's also much, much less culpable than
22 the other people in this case, who your Honor heard about:
23 John Dodelande, who received \$12 million in cash, Yomi Rodrig,
24 and other players that we heard about at the trial, and,
25 certainly, Mr. Demane, who is a career criminal, you heard tens

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1 of millions of dollars here, so there's no doubt about that.

2 But moving to comparing Mr. Lavidas to other people
3 who have been convicted of similar crimes: 18, U.S.C., 3553(a)
4 directs the Court to consider that. And when you compare
5 Mr. Lavidas to the sentences that have been given to other
6 people like him, even the government acknowledges that there
7 have been many, many such sentences that have been below the
8 eight and a half months we're asking for here, that have been
9 probationary sentences or lower than the eight and a half
10 months, or perhaps slightly higher than the sentence here. But
11 I'm going to explain to your Honor why I think the eight and a
12 half months is the right sentence here even if another
13 defendant got 12 months in other circumstances that were served
14 under very, very different circumstances from the circumstances
15 Mr. Lavidas has already served under.

16 We showed this in our sentencing submission. There
17 are 12 pages or so in the sentencing submission that go through
18 in detail of a series of other sentences. We canvassed every
19 single sentencing that has occurred in the Southern District in
20 an insider trading case in the last ten years, and we tried to
21 represent to your Honor a representative sample. The
22 government came back with one sentence, the Sean Stewart
23 sentence, and I'm going to talk about this as I go through
24 this, but, first of all, I want to give you some examples from
25 what we submitted.

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1 For one, there is the Benjamin Chow sentencing.
2 Benjamin Chow is very similar to Mr. Lavidas. He worked at a
3 private equity fund. He is alleged, and he was convicted at
4 trial -- not a plea -- convicted at trial of tipping a friend.
5 That friend made \$5 million in profits on the tips. Mr. Chow
6 had no knowledge or control over how much trading he would do,
7 just as Mr. Lavidas had no knowledge or control over how much
8 trading Nikas, or Demane, or anybody else would do here.
9 Mr. Chow was convicted at trial. He had the exact same
10 sentencing guidelines range that the government alleges here.
11 And Judge Woods decided that the guidelines grossly overstated
12 his culpability because of the fact that he had no control over
13 the trading. If there had been \$10,000 worth of trading, he'd
14 have a totally different guidelines range than the 5 million in
15 trading that Benjamin Chow's tippee engaged in. And Judge
16 Woods decided, in addition to the family circumstances and his
17 otherwise good life, like Mr. Lavidas, that the appropriate
18 sentence was three months in custody after a trial. That is
19 significantly lower than the sentence here. And, incidentally,
20 Judge, that sentence was served at a camp, self-surrender,
21 months after his sentencing. Very, very different
22 circumstances than ours here.

23 The next sentence I wanted to mention to you in
24 thinking about other similarly situated defendants -- and,
25 incidentally, I will say, also, Mr. Chow lied to FINRA when he

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1 was questioned about the conduct here in his case. Mr. Lavidas
2 never, ever lied to anybody about any of this. He went to
3 trial -- he did -- but he did not lie to anybody about any of
4 this. And that is a difference between him and both Mr. Chow
5 that makes him less culpable, and I will get to Mr. Stewart in
6 a minute.

7 Cameron Collins: Cameron Collins was the son of a
8 sitting U.S. House of Representatives member who was also a
9 member of the board of a pharmaceutical company. His father
10 was that member of Congress. He was tipped by his father about
11 some information about that company, and he himself tipped his
12 friends about it, and he himself traded, avoiding losses of
13 \$571,000. So, unlike Mr. Lavidas, who never, ever traded,
14 Mr. Collins traded on the information he was tipped to the tune
15 of \$571,000, tipped others, and he also lied to the FBI when he
16 was asked about the conduct.

17 The defense in that case asked for a probationary
18 sentence based on his lifetime of good works, the fact that
19 this was aberrant conduct, and that the guidelines overstated
20 his culpability. And Judge Broderick agreed and gave him a
21 sentence of probation.

22 Now, I know in that case, he pled guilty, but, number
23 one, his conduct was in many ways much more culpable, he lied,
24 he traded himself; and, secondly, he got probation, and
25 Mr. Lavidas has already served eight and a half months of very

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1 hard time, as I'll discuss in a minute.

2 The last one I want to discuss with you is Bryan
3 Cohen. The government raised it. I want to talk about that
4 case for a minute.

5 Mr. Cohen tipped Demane, who then tipped Nikas. The
6 government says the guidelines were much lower in that case.
7 The guidelines in that case were only much lower because of the
8 accident of where his tippees traded. They traded in Europe,
9 and, therefore, that didn't count for purposes of the
10 sentencing guidelines, and so his guidelines were only 200 --
11 can you hear me still?

12 THE COURT: Yes.

13 MR. STREETER: His guidelines were only based on
14 \$260,000 in trading, but as the government laid out in its
15 sentencing submission in the Cohen case, in fact, Mr. Demane
16 and Mr. Nikas made more money off of Cohen's tips than they did
17 off of Mr. Lavidas' tips. They made about \$9 million off of
18 Mr. Cohen's tips, and the government, in that sentencing
19 submission, said that that was relevant for considering
20 sentencing. Now the government wants you only to consider the
21 fact that the guidelines sentence, which is determined only by
22 the accident of geographically where the trading occurred,
23 should be the difference maker. The reality is that Bryan
24 Cohen's tips actually resulted in more profits for Demane and
25 Nikas than Mr. Lavidas' did.

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1 Secondly, Mr. Cohen's conduct was much, much more
2 culpable. He received more than a million dollars in cash
3 payments in bags in Europe, which he hid in safes at his
4 parents' house. This is in the government's sentencing
5 submission. He used burner phones. He engaged in coded
6 conversations. The person who handed out the burner phones
7 testified in this case and testified that Mr. Lavidas didn't
8 get burner phones. Mr. Lavidas was much, much less culpable
9 than Bryan Cohen.

10 And, so, the Bryan Cohen case, where Judge Pauley
11 sentenced him to home confinement, is an important guide here,
12 and, frankly, Mr. Lavidas is much, much less culpable than
13 Mr. Cohen.

14 I want to talk for a minute about the Sean Stewart
15 case. Now, the Sean Stewart case: Number one, Mr. Stewart's
16 sentence was 24 months. He had been released from BOP custody
17 five months before finishing serving his sentence. He is now
18 out on home confinement. He got out five months early.

19 And, incidentally, I want to say something about what
20 the government said about Cohen and his medical condition.
21 Mr. Cohen is a 34-year-old person who has asthma. Now, I'm not
22 going to minimize that, but we're not talking about an aged
23 person who has COPD or something where COVID-19 is a much more
24 serious threat. The reality is that Judge Pauley looked at all
25 this picture that I just told you, and he decided that the

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1 appropriate sentence was a period of home confinement.

2 With respect to Mr. Stewart: Mr. Stewart had a
3 24-month sentence, the longest sentence the government found to
4 cite, and he was let out five months early as a consequence of
5 COVID-19. He is a middle thirties healthy person. In
6 addition, there were many, many factors in that case that made
7 his conduct much, much more culpable than Mr. Lavidas is.
8 Number one, he lied to his employer when they came around and
9 asked about him tipping his father;

10 Number two, he lied to FINRA when they came around and
11 asked about his tipping his father;

12 Number three, he coached his father to lie to the SEC
13 when his testimony was taken;

14 Number four, he violated the terms of his bail and
15 engaged in basically liquidating assets he wasn't supposed to
16 liquidate while he was out on bail;

17 Number five, he testified and perjured himself at his
18 trial.

19 All of those factors were highly relevant to the
20 government's position on his sentencing, made him much more
21 culpable, and were highly relevant to the two judges who
22 sentenced him to, ultimately, 24 months' imprisonment.

23 Incidentally, Mr. Stewart, like Mr. Chow,
24 self-surrendered months after his sentence to camp, and when
25 COVID-19 came around, Mr. Stewart was released.

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1 I want to now move briefly to the conditions of
2 Mr. Lavidas' confinement. This is highly relevant to
3 sentencing.

4 The time he has served has been very, very hard time.
5 It has been at the MCC and then the MDC, and for the last 90
6 days, it has been almost entirely on lockdown. I want to give
7 your Honor an example of what that means. The last week, as
8 your Honor knows, our sentencing was canceled last Thursday
9 because there was an issue at the MDC. The issue was that they
10 got information that there was a weapon inside the facility,
11 and they locked the entire facility down to search for the
12 weapon. Mr. Lavidas has been, and was, locked down from
13 Thursday morning, before the sentencing last week, up until
14 yesterday. He was in his cell. Mr. Lavidas --

15 THE COURT: Okay. I lost a visual of the defendant at
16 this very moment.

17 Mr. Rogers, are you still with us?

18 Ms. Rojas, could you please get Mr. Rogers to assist
19 us?

20 THE DEPUTY CLERK: I will do so.

21 (Pause)

22 THE COURT: I should put on the record that it's now
23 12:18, and we probably lost the defendant's participation at
24 about 12:15, roughly. And I have a message from Ms. Rojas that
25 she has been in contact with Mr. Rogers from our District

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1 Executive's office, who will, hopefully, be able to help us
2 regain the defendant's participation.

3 (Pause)

4 THE COURT: Thank you.

5 The court reporter has rejoined the proceeding.
6 Nothing has happened in his absence.

7 (Pause)

8 THE DEPUTY CLERK: Hello. This is Gloria Rojas
9 speaking.

10 THE COURT: Yes. My courtroom deputy is now speaking.

11 THE DEPUTY CLERK: Thank you, Judge Cote.

12 So, he should be reconnected soon, very soon. Matt
13 Rogers will stay on until -- just to make sure that it does
14 happen. So it should come up shortly.

15 THE COURT: Thank you.

16 We received that message at 12:22.

17 (Pause)

18 THE DEFENDANT: Hello.

19 THE COURT: It is now 12:25. I can see Mr. Lavidas.
20 Mr. Lavidas, can you see and hear me?

21 THE DEFENDANT: Yes, I can, your Honor.

22 THE COURT: Mr. Streeter, can you see and hear your
23 client?

24 MR. STREETER: I can, your Honor.

25 THE COURT: So, Mr. Lavidas, can you see and hear your

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1 attorney?

2 THE DEFENDANT: Yes, I can, your Honor.

3 THE COURT: Thank you.

4 Mr. Streeter, you may continue.

5 MR. STREETER: Thank you, your Honor. I don't have
6 much more to do.

7 I just want to spend a little bit of time on the
8 conditions of confinement, and then I'll get to my last two
9 points and wrap up.

10 For the last six days, Mr. Lavidas has been on
11 lockdown. He has been allowed out of his cell for five minutes
12 on two of those days to take a shower. This is no criticism of
13 BOP, they were dealing with a crisis situation, but, your
14 Honor, they were literally fed bread, and peanut butter, and
15 granola bars for those six days. This is really hard
16 circumstances for anybody to serve time in, your Honor, and it
17 is relevant in thinking about the sentencing. He had no
18 contact with his wife, with his daughter, with me, or anybody
19 else.

20 And these basic conditions of confinement, this
21 lockdown circumstance, has been on and off for 70 of the last
22 90 days, first because of COVID-19 for 52 days, then because of
23 the George Floyd circumstances for another ten or so days, and
24 then for the last six days because of this situation at the MDC
25 that caused the sentencing to be delayed. So, 70 of the last

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1 90 days, roughly 70 of the last 90 days, he has been under
2 lockdown circumstances, essentially solitary confinement,
3 coming out of his cell for 15 minutes a day, three days a week,
4 those kinds of things. It has been very, very hard. And even
5 when those circumstances are lifted, he's out of his cell for
6 three hours a day on weekdays and back into his cell fully on
7 weekends. He's been permitted no family visits for the last
8 four months, and he's not seen his wife, he has not seen his
9 daughter, who he's very close to, he's not seen his son, who
10 was born one month ago. He has not had any visitation.

11 Now, I understand the government's approach, it's
12 everybody is enduring this. And I also understand the BOP is
13 doing the best it can under the circumstances, and I do not
14 criticize that at all, but the facts are that Mr. Lavidas has
15 endured eight and a half months of very, very hard time, and
16 Judges McMahon, Rakoff, and Pauley have all decided, in other
17 cases recently in this district, that the conditions of
18 confinement and the harshness of those conditions is highly
19 relevant in fashioning a sentence, and in all three of those
20 cases where they considered it, they actually gave probationary
21 sentences or noncustodial sentences. In the case of Judge
22 Pauley, it was Mr. Cohen, and it was home confinement.

23 The other thing is that none of the other defendants
24 that we discussed in our memo, the other people who we detail
25 in those pages about other insider trading defendants, endured

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1 these kinds of conditions. And so some of those people might
2 have gotten a year and a day or something like that, but they
3 got it by serving in a camp, self-surrendering, and that's part
4 of why we're asking for time served here, your Honor, because
5 eight and a half months has been a very, very stern punishment
6 of eight and a half months.

7 I want to march now, your Honor, to the probation
8 report, if I could, and address that briefly.

9 We're grateful for the probation report, we're
10 grateful that they recommended a sentence well below the
11 guidelines, but the probation report didn't take account of
12 everything that I think your Honor should take account of,
13 mostly because they couldn't have because some of the events
14 occurred after they issued their report. Number one, I don't
15 know what finding your Honor is going to make with respect to
16 the role, but if your Honor does decide that some sort of role
17 reduction is appropriate here, probation did not, and if you do
18 decide a role reduction is appropriate, I think that changes
19 the starting place, which oftentimes changes the ending place.
20 So that's one thing that is relevant.

21 The next thing is that the probation report was issued
22 on April 6th. That was just at the very beginning of these 70
23 days of lockdown that I just described to you. They had no way
24 of knowing the sort of length, and extent, and sort of
25 difficulty of the conditions of that lockdown, and so they

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1 could not have taken account of it in making their
2 recommendation. And they didn't take account of it, obviously,
3 because it occurred after they issued their report.

4 Secondly, your Honor, the probation report doesn't
5 discuss any of the other sentences that we discuss in our
6 memorandum in which similarly situated defendants received
7 significantly less than 18 months for similar, and oftentimes,
8 more culpable conduct.

9 In addition, your Honor, the probation report was
10 issued well before the Cohen sentencing. As we discussed,
11 Cohen was sentenced to home confinement for conduct that was
12 much more culpable. Probation couldn't have taken account of
13 that because it happened well after they issued their
14 recommendation.

15 The last thing I'll mention that probation didn't take
16 account of -- again, because it occurred after the report -- is
17 that since April 6th, the Bureau of Prisons has released many
18 nonviolent first-time offenders, like Mr. Stewart, and that has
19 to be relevant in thinking about how similarly situated
20 defendants are being punished in these cases. And probation
21 did not have access to that information because it had not yet
22 happened. The Attorney General's memo authorizing the release
23 of people didn't occur until early April, and that's when the
24 report was issued, the probation report.

25 And, so, while we're grateful for the probation

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1 report's analysis of some of the issues, probation did not have
2 access to or information about these other things because they
3 just simply hadn't yet occurred.

4 The last thing I want to talk about is the impact of
5 Mr. Lavidas' custody on his family. Judge, Judge Kaplan
6 recently decided that this was highly relevant in sentencing an
7 insider trading defendant. Other judges in this district, it
8 is a well-known basis finding that when the guidelines are
9 mandatory, for a downward departure from the guidelines, and
10 this, Mr. Lavidas' continual incarceration, has already had a
11 great impact on his family, and if it is continued on from
12 today, it will continue to have a profound and troubling impact
13 on his family. Your Honor mentioned at the outset that there
14 are two letters in the exhibits that were issued back in March,
15 prior to the last three months, about the impact of the
16 incarceration on his wife and the impact of the incarceration
17 on his daughter, and now his son has been born in the last
18 month, and it will also has an impact on him. There can be no
19 doubt from the 144 letters that Mr. Lavidas is a loving and
20 doting father. He bathed his daughter regularly. He spent
21 time with her all the time. He was absolutely devoted to her.
22 And his absence is going to have a profound impact on her if it
23 is extended.

24 Secondly, he is a devoted and caring husband. The
25 letters demonstrate this in so many ways, I can't count them.

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1 And he obviously will be a devoted father to his son, who was
2 born while he was in custody, his wife gave birth to a month
3 ago. His wife and two children are living in New York without
4 any family support at all. Her family is from Italy, his
5 family is from Greece, and none of them can travel here because
6 of COVID-19. And so, Katerina Lavidas, his wife, is giving
7 birth and dealing with raising their two children in their
8 apartment in New York without any family support at all. She
9 cannot visit her husband; her children cannot visit her
10 husband. It seems obvious, given what's happening with
11 COVID-19 exploding in many parts of the country, that
12 visitations at BOP facilities are not going to be resumed
13 anytime soon. They barely get to speak to him on the phone,
14 especially during these lockdown periods.

15 THE COURT: I had a question about that last issue. I
16 know at one time, the defendant's sisters were in New York, and
17 he had childcare or support in the home that was employed. Can
18 you address that?

19 MR. STREETER: Sure, your Honor. Absolutely.

20 So, he obviously has a father, a mother, and four
21 siblings. The father and mother are in Greece. Three of
22 his -- I'm sorry, three siblings. There are four children in
23 the family. He has three siblings. Two of those siblings, his
24 elder sister and one of his twin sisters, are in Greece, one of
25 his sisters is in New York, but Katerina cannot have visitors

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1 at the apartment given COVID-19. She's been pregnant for
2 almost the entire time of his custody. People who are pregnant
3 are highly at risk for COVID-19, and so she hasn't been able to
4 even have friends over. So it is true that one of his sisters
5 of his larger family is here in New York, but the reality is
6 that there's not much family support there.

7 And it is true, your Honor, that they have had the
8 assistance of a nanny inside the home, that is true, but there
9 is no family support whatsoever. They are an ocean away.
10 Katerina is from Italy, she's not from New York, so she is
11 alone in New York with a nanny raising two children now,
12 without Mr. Lavidas, who's very close to them. And releasing
13 him to be with his family and help take care of them would
14 alleviate that concern and that problem, and it is a relevant
15 factor in thinking about the sentence here.

16 The last thing I want to say, your Honor, is that over
17 the last eight months, I have gotten to know Mr. Lavidas and
18 his wife very well. These are incredibly kind, respectful,
19 understated, generous, good people. I ask your Honor to impose
20 a sentence of time served and return him to his family.

21 Thank you, your Honor.

22 THE COURT: Thank you.

23 Mr. Lavidas, is there anything you would like to say
24 to me on your behalf in connection with this sentence?

25 THE DEFENDANT: I do.

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1 Your Honor, thank you for giving me the opportunity to
2 say a few words before you pronounce your sentence.

3 When I was a young boy, I remember hearing something
4 that my grandfather used to say. He said that everyone
5 expression has an imaginary label on his or her back where
6 people can write what they think about us, but that label is
7 visible to everyone else but the person who wears it. That
8 idea has struck me from a young age, and I have tried
9 throughout my life to work as hard as possible to fill my label
10 with as many good words as possible.

11 When I read the letters that people submitted in
12 support of my sentencing, so many events came to mind, so many
13 memories surfaced, that warmed my heart. People have noticed
14 my love and acts of kindness. When I read these letters, I
15 cried.

16 As I read them, I also thought of the mistakes I have
17 made in my life. Every time I did a mistake, I worked very
18 hard to reflect upon it, to make sure I never repeat it. The
19 last eight, almost nine months since my arrest have been the
20 most difficult of my life not because I missed the comforts of
21 life, no; it's because I miss, now appreciate, so much more --
22 what God has given us all for free - the people we love, the
23 beauty of nature, and the fulfillment we get when we help
24 others.

25 But, most of all, I miss my special wife, Katerina,

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1 and my precious daughter. We were very close. I used to bathe
2 her, I used to feed her, and always make her a priority. My
3 son has been born, but I still haven't met him. I'm not there
4 to take care of my family, and I have not been there to support
5 them and protect them throughout this pandemic.

6 I'm so sorry to my wife, who had to endure such a
7 difficult pregnancy all by herself, with her family far away in
8 Italy and my family far away in Greece. I'm so sorry to anyone
9 else in my life who has supported me and helped me.

10 Your Honor, in the last months, I have learned the
11 meaning of consequences and humility. The verdict in this case
12 will be my personal burden for the rest of my life. My wife
13 keeps me going, still standing on my feet, in the hope that as
14 soon as my sentence will be over, I have the opportunity to
15 vindicate myself by doing good, by being respectful, and
16 helping people in any way I can. I know, your Honor, that I
17 can't control what people will write of this imaginary label
18 that I mentioned for my back, but what I know is that I will
19 spend the rest of my life giving people reasons to write good
20 words.

21 And I started this process, as Jon said, at MCC and
22 MDC, where I worked very hard to expend myself to become a
23 better person and a better professional and where I also helped
24 other people in here who needed help, either learning English,
25 or mathematics, or even help them help start a business as soon

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1 as they will be out of here.

2 When my sentence is over, I will work even harder at
3 giving back to the people in my life and helping those in need,
4 giving back to society, and raising my children to become
5 respectful, kind, and generous people in this world.

6 I want to finish by apologizing to your Honor, to the
7 U.S. Government, and to anyone else affected by this case. I
8 hope I can make amends. I ask for your leniency.

9 Thank you, your Honor.

10 THE COURT: Thank you, Mr. Lavidas.

11 Let me begin by just describing, very briefly, the
12 evidence at trial and give context to my analysis of the
13 arguments about the defendant's role.

14 Although the evidence at trial was largely
15 circumstantial, it was overwhelming with respect to the
16 defendant's guilt. Most of the critical facts were, of course,
17 undisputed. The defendant's father was on the board of Ariad
18 and had access to his most confidential information. The three
19 announcements, which the insider trading anticipated, were
20 material. Two of them were in 2013 and concerned FDA action on
21 a major drug for the company; one in 2015 concerned an offer to
22 acquire Ariad by Baxalta. Lavidas' very good friend, maybe one
23 of his best friends, Mr. Nikas, engaged in significant trading
24 in advance of each of these announcements. That friend was in
25 an insider trading conspiracy with a man named Marc Demane

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1 Debih. Demane and his network of traders made millions of
2 dollars or avoided substantial losses from trading in advance
3 of each of the three Ariad announcements. Lavidas was in near
4 communication with both his father -- well, with his father and
5 in frequent communication with Nikas.

6 The only issue that the defendant actually tried to
7 put in dispute at trial was whether it was the defendant,
8 Mr. Lavidas, who actually tipped Nikas. The defendant offered
9 an analysis of some of the trading and telephone calls to argue
10 that the trading preceded the calls. The defense suggested
11 that an investment banker in London at Centerview Partners may
12 have been the source for the confidential information which
13 went to Demane and then Nikas as opposed to the other way
14 around.

15 This latter defense was premised on pure speculation
16 and suffered from a fatal defect. The two 2013 announcements
17 concerned FDA announcements, and Centerview had no access to
18 that FDA activity. While Centerview may have had access to the
19 2015 information about the corporate takeover, its lack of
20 access to the 2013 confidential information largely eviscerated
21 the strength of any speculation about Centerview being the
22 source of the tip in 2015.

23 Second, Demane testified at trial that his only source
24 for tips about Ariad came from Nikas. He was entirely credible
25 on this point. Indeed, Nikas shorted stock in 2013 when he

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1 learned that the FDA planned to remove a critical leukemia drug
2 from the market. All of his other insider trading involved
3 taking long positions.

4 In sum, the evidence of Mr. Nikas' guilt was
5 overwhelming, and the jury's verdict was well supported.

6 With that as background, let's go to the argument
7 about a role adjustment. 3B1.2 allows role adjustment for both
8 a minor and a minimal participant. The defendant seeks a
9 decrease of four levels in the sentencing guidelines analysis
10 based on the defendant's minimal participation.

11 In order to assess this argument, I have to assess
12 whether the defendant has shown that he played a part in
13 committing the offense that makes him substantially less
14 culpable than the average participant in the criminal activity.
15 Of course, I'm looking here at only that criminal conduct in
16 which the defendant was personally involved. It is only that
17 conduct on which the sentencing guidelines range has been
18 calculated here.

19 I may consider whether or not, when guidelines range
20 is driven in part by a loss amount, whether that loss amount
21 greatly exceeds the defendant's personal gain or whether the
22 defendant had limited knowledge of the scope of the scheme. If
23 either of those are true, they may support an adjustment.

24 I am also guided by the sentencing guidelines to look
25 at a number of factors since this is a fact-based

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1 determination. They include the degree to which the defendant
2 understood the scope and structure of the activity, the degree
3 to which he participated in planning or organizing it, the
4 degree to which he exercised decision-making authority or
5 influenced the exercise of decision-making authority, the
6 nature and extent of his participation, including acts that he
7 performed and the responsibility and discretion that he had in
8 performing those acts, and the degree to which he stood to
9 benefit.

10 I must keep in mind -- and defense counsel has
11 reinforced this -- that the fact that the defendant has
12 performed an essential or indispensable role is not
13 determinative.

14 Now, for a minimal participant, the guidelines
15 cautions that it is intended to cover defendants who are
16 plainly among the least culpable of those involved in the
17 conduct. And taking that admonition, I have considered the
18 defendant's motion in the following way:

19 I have already described for the record what the jury
20 found in returning its verdict of guilty, both of the
21 defendant's knowledge and intent and also his father's
22 knowledge and intent. And the jury charge with respect to
23 personal benefit described a finding of personal benefit
24 broadly. It included an instruction that a personal benefit
25 may be intangible and it need not be pecuniary in nature. It

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1 can be simply the intention to confer a benefit on the
2 recipients of the information. There were multiple ways in
3 which the jury was charged in this regard, but the defendant,
4 in his argument, has emphasized, I believe, that part of the
5 jury charge.

6 I find that the defendant's decision to tip Nikas here
7 was part of a family affair. It's not disputed that he is
8 exceedingly close with his father, and the trial evidence
9 permitted the jury to find that. The letters submitted on the
10 defendant's behalf reinforce that.

11 During the period 2013 to 2015, when the insider
12 trading was going on, Greece was suffering economically, to put
13 it mildly, and the defendant's father, although very wealthy,
14 was having a liquidity crisis. He began borrowing from Ariad's
15 CEO in January 2012 and continued to do so periodically through
16 at least December 2015. There were two loans extended in
17 September and December 2013, right around the time of the first
18 two tipping schemes.

19 I cannot find, based on this record, that a role
20 adjustment is appropriate. The defendant understood this scope
21 and structure of his criminal activity. He had the power to
22 halt the entire scheme. Whether Lavidas, the defendant,
23 suggested the scheme to his father or vice versa, he was
24 certainly an equal partner with his father in the scheme in
25 which they both anticipated benefiting.

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1 He also, the defendant, played a critical role. Nikas
2 was his friend. The defendant knew Nikas was an active
3 securities trader. He had -- that is, the defendant had --
4 every reason to expect that Nikas' trading would involve large
5 sums of money.

6 To make this scheme work, the defendant had to act
7 with expedition, and he did so.

8 I cannot find that he is substantially less culpable
9 than the average participant. His culpability far extends
10 beyond him playing a minimal, but indispensable role in this
11 activity.

12 The defendant has argued that the crime was a
13 misguided act of friendship to Nikas, that the defendant tipped
14 Nikas on a few occasions as part of a selfless, but misguided
15 effort to help a friend for the mutual benefit of a continued
16 friendship and their overlapping business interests, that the
17 defendant had limited knowledge of the scheme, and that the
18 defendant had a limited function.

19 I do not find any of those statements made in the
20 sentencing submission to accurately describe the evidence at
21 trial.

22 Let me turn to what is more important here, though, in
23 every way, and that is the 3553(a) factors, because whatever
24 the sentencing guidelines would be in this case, whether it is
25 as calculated by the PSR or even if there would be a minimal

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1 role adjustment, as the defendant argues for, I will be
2 imposing a sentence far below the lowest level under either
3 calculation.

4 So, who is the defendant?

5 He submitted 144 letters. I read each of them. There
6 were at least a dozen that were particularly important to me in
7 my analysis and understanding of the defendant and the
8 appropriate sentence here, but each one of them has been
9 considered by me.

10 There is also a description of the defendant contained
11 in the PSR, and I have considered that as well.

12 Based on everything that's been argued to me and that
13 I have read, I find that the defendant was born into a wealthy,
14 privileged Greek family. The family business, Lavipharm, was
15 founded in 1911. He is his parents' only son and was trained
16 from an early age to succeed his father in running the
17 business. He is devoted to Lavipharm and its employees, and
18 has done many acts of kindness for those employees. From an
19 early age, he was perceived as being mature beyond his years.
20 He is a kind person, he is empathetic, he is a modest man, he
21 is a caring man. He is devoted to his family and exceptionally
22 close to them, including to his father. He is a wonderful and
23 generous friend to many, many friends. He is a caring husband
24 and a devoted father.

25 He was born in New York and came to the United States

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1 for college. Between 2012 and 2018, roughly, he tried to make
2 his own way as an entrepreneur in New York and created a health
3 bar business named Mediterra. When that venture failed, he
4 returned to the family business.

5 Following his arrest, he has been incarcerated in the
6 MCC. He has shown exceptional character while incarcerated.
7 He has assisted his fellow inmates. He wrote a children's book
8 for his daughter to help her cope with his absence.

9 After his trial, he was moved to the MDC, and he has
10 suffered there, as have other inmates, from the restrictions
11 implemented in response to the pandemic and, mostly recently,
12 in response to a security issue that arose in the institution.

13 I'm pausing for a moment to look at notes that I made
14 from counsel's arguments to me and the defendant's statement,
15 to make sure, I don't want to add something beyond what I've
16 already said.

17 I think it's clear, from what I've already said, that
18 I don't find that the defendant is less culpable than the
19 average participant. The engagement on three separate
20 occasions, in the way that I described, shows the kind of
21 knowing and intentional behavior that the law should, and does,
22 punish. It's involvement that was far beyond just being an
23 essential cog in a scheme.

24 I do find that the fact that the defendant's
25 experience in prison has been very difficult because of the

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1 lockdown relevant and important for me to consider.

2 I've also considered the variety of sentences imposed.
3 Of course, in each case, a judge does their best to apply the
4 3553(a) factors, does their best to avoid unwarranted
5 disparity, does their best to fashion a sentence based on the
6 individual before them, and the criminal conduct involved.

7 So, let me turn to some of the additional findings I
8 must make in weighing the 3553(a) factors.

9 No one is suggesting here that insider trading isn't a
10 serious crime. It is. It's a difficult crime to prosecute,
11 and particularly difficult when it's part of an international
12 scheme, as this was. Many critical witnesses and defendants
13 are beyond the reach of American prosecutors, but it is the
14 American market and the integrity of that market that suffers.
15 The integrity of the American stock market, and our securities
16 markets generally, are important to our nation, and that's why
17 we have the laws we have with respect to insider trading and
18 violations of other securities regulations.

19 So, the issue of general deterrence and appropriate
20 punishment both strongly support a serious term of imprisonment
21 here.

22 The defendant has not expressed remorse; he has not
23 acknowledged any wrongdoing. At the end of his statement to
24 me, he said he wished to find vindication through doing good
25 works. He apologized, in a general way, and said he wished to

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1 make amends, but I have not heard a straightforward statement
2 acknowledging his criminal activity or expressing remorse for
3 helping his father breach his father's fiduciary duty to his
4 company by using, very intentionally, information about that
5 company's situation to allow an active securities trader to
6 benefit, to whatever extent that trader wanted to, from that
7 material nonpublic information.

8 There is an aspect here of the father's breach of his
9 fiduciary duty to his company, and the defendant's knowledge
10 that his father was doing that in making these three tips over
11 the course of 2013 and 2015, that is deeply troubling. If it
12 hadn't been -- enough said on that.

13 I also want to acknowledge, however, that I don't
14 expect that either the defendant or his father are likely to be
15 in a position to commit insider trading again in any way that
16 would affect the U.S. stock market. He has already -- that is,
17 the defendant -- paid a very steep price for doing so with
18 respect to Ariad.

19 I have no reason to believe that the issue of
20 individual deterrence should play any significant role in
21 deciding this sentence.

22 As I've said already, a sentence of either 63 months
23 in prison or 41 months in prison is not appropriate in this
24 case, and I have considered both guidelines ranges in deciding
25 what sentence to impose here.

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1 I've also considered the other sentences, because I
2 must avoid unwarranted disparity; the other sentences, that is,
3 that counsel have directed my attention to.

4 So, what is the range that I think is important for me
5 to consider?

6 So, I think a sentence of 24 months' imprisonment
7 could be appropriate, I think a sentence of 18 months'
8 imprisonment could be appropriate, I think a sentence of a year
9 and a day could be appropriate. And I think a sentence of time
10 served is not appropriate, considering all the 3553(a) factors.

11 I think that the sentence, if we weren't in the midst
12 of the pandemic, and if the defendant had not been experiencing
13 the situation that he has in prison, and if he hadn't shown the
14 character in responding to that situation, I don't know what
15 sentence I would have imposed, whether it would have been 18
16 months or 24 months, but I can't ignore how difficult this time
17 is, for reasons that have nothing to do with the defendant's
18 criminal culpability. And I was deeply impressed by the fact
19 that the defendant, who responded to these very difficult
20 circumstances, responded in a way that was so positive, and it
21 really is part of the way he has lived his life. He tried to
22 help others, he tried to help his fellow inmates, he tried to
23 help his daughter. And that is part and parcel of his
24 character.

25 And based on that, and all of that, I am going to

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1 impose a term of imprisonment of a year and a day.

2 I have additional components of the sentence to
3 announce.

4 I will order restitution as described in the consent
5 order and as amended to our discussion earlier today.

6 I impose a term of supervised release of three years.
7 The defendant must comply with the standard conditions of
8 supervised release and pay restitution.

9 He must also submit to a reasonable search. He is to
10 provide the probation department access to any and all
11 requested financial information. He shall not incur any credit
12 card charge or open any new credit lines without approval of
13 the probation department.

14 I'm sorry, Mr. Streeter cannot hear me. We'll just
15 pause for a moment while I wait to see if he can indicate he
16 can hear me. It's 1:02.

17 Mr. Lavidas, can you still hear me?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And can the government still hear me?

20 MR. TRACER: Yes, your Honor.

21 (Pause)

22 THE COURT: I am watching Mr. Streeter on the video
23 link as he apparently is trying to gain access to audio --
24 regain access to audio.

25 Mr. Rogers, are you still with us?

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1 (Pause)

2 THE COURT: Ms. Rojas, are you with us?

3 THE DEPUTY CLERK: I am, your Honor.

4 THE COURT: Please communicate by email with
5 Mr. Streeter to see if there's anything we can do to help him,
6 and please contact Mr. Rogers.

7 THE DEPUTY CLERK: Will do.

8 (Pause)

9 THE COURT: Mr. Streeter, are you able to hear me yet?

10 MR. TRACER: Your Honor, can you hear me?

11 THE COURT: I can hear you, Mr. Tracer.

12 MR. TRACER: Okay.

13 So, Mr. Streeter called me and I put him on speaker
14 next to my phone, and if he can hear me, this may be a pass
15 that works for now.

16 THE COURT: Mr. Streeter, are you able to hear me?

17 MR. STREETER: Yes. I think you're going to have to
18 take your headphones out and put both phones on speaker.

19 MR. TRACER: Okay. How about now?

20 THE COURT: Mr. Streeter, can you hear me?

21 MR. STREETER: I can't hear the Court. I can hear
22 you. Unplug your headphones.

23 MR. TRACER: Okay. I've just done that.

24 MR. STREETER: Put both phones on speaker.

25 MR. TRACER: Okay, done.

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1 THE COURT: Mr. Streeter, are you able to hear me?

2 MR. STREETER: I can now, yes, your Honor. Thank you.

3 I'm sorry, I don't know what -- my phone just cut out.

4 It's not my phone, it's something else happened, I don't know

5 what, but I was just terminated from the call about three

6 minutes ago.

7 THE COURT: Thank you. It's now 1:11.

8 I was listing the conditions of supervised release.

9 I'm happy to go back as far as I need to, to fill you in,

10 Mr. Streeter.

11 When did you lose audio connection?

12 MR. STREETER: I didn't hear the sentence that just

13 got announced.

14 THE COURT: Okay.

15 I announced a sentence of one year and one day, to be

16 followed by a term of supervised release of three years.

17 Do I need to go back further, Mr. Streeter?

18 MR. STREETER: No. I'll see the transcript.

19 Thank you, your Honor.

20 THE COURT: The three years of supervised release has

21 the following conditions: The standard conditions of

22 supervised release, the requirement that the defendant pay

23 restitution as described in the earlier portion of this

24 proceeding, the condition that the defendant submit to a

25 reasonable search, that the defendant provide the probation

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1 department access to any and all requested financial
2 information, that the defendant not incur any new credit card
3 charge or open any new credit lines without approval of the
4 probation department, that he perform community service at the
5 rate of 100 hours for each of the three years of supervised
6 release in a way that is approved by the probation department,
7 that he be supervised by the district of his residence, that he
8 pay a special assessment of \$700, that he pay a fine of
9 \$50,000.

10 And I don't believe -- I know there are no open
11 counts.

12 Let me ask, counsel, do you know of any legal reason
13 why I cannot impose the sentence I have just described as
14 stated?

15 I'll ask the government first. Mr. Tracer?

16 MR. TRACER: No, your Honor.

17 THE COURT: Mr. Streeter?

18 MR. STREETER: No, your Honor.

19 THE COURT: I order the sentence I have described on
20 the record to be imposed as stated.

21 I need to advise the defendant of his right to appeal.

22 If you're unable to pay the costs of an appeal, you
23 may apply for leave to appeal in forma pauperis. Any notice of
24 appeal must be filed within 14 days of the judgment of
25 conviction.

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1 Mr. Tracer, is there anything else that we need to do?

2 MR. TRACER: No, your Honor.

3 THE COURT: Mr. Streeter, is there anything else that
4 we need to do?

5 MR. STREETER: I know I went to trial on a superseding
6 indictment. I thought that ordinarily the underlying
7 indictment would be dismissed under those circumstances.

8 MR. TRACER: I agree with that.

9 THE COURT: So, the underlying indictment is dismissed
10 as to this defendant.

11 Anything else, Mr. Streeter?

12 MR. STREETER: Not that I can think of, no, your
13 Honor.

14 THE COURT: And, Mr. Lavidas, were you able to hear my
15 instruction as to your right to appeal?

16 THE DEFENDANT: I did, your Honor.

17 THE COURT: Okay.

18 Thank you, all, and thank you for your submissions and
19 assistance in this sentence. Thank you.

20 MR. TRACER: Thank you, your Honor.

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